

Office of the Yavapai County Attorney
255 E. Gurley Street, Suite 300
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

YAVAPAI COUNTY ATTORNEY'S OFFICE
JOSEPH C. BUTNER SBN 005229
DEPUTY COUNTY ATTORNEY
255 East Gurley Street
Prescott, AZ 86301
Telephone: 928-771-3344
ycao@co.yavapai.az.us

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 NOV -5 PM 4:23 ✓

JEANNE HICKS, CLERK

BY: B. Hamilton

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S REPLY TO DEFENDANT'S
OBJECTION TO THE STATE'S MOTION
FOR TAKING PHYSICAL EVIDENCE

As the Court is acutely aware, the disclosure in this case is vast. To date, the State has disclosed well over 14,000 documents. Many of the financial documents and communications between the victim and Defendant are material to the State's case and are hand-written or contain hand-written notations by either the victim or Defendant. The State has asked Defendant to stipulate that the hand-writing the State believes is Defendant's is in fact Defendant's; however, the State has not received a definitive response.

Regarding the timeliness of the request and disclosure of handwriting expert, we are still months from trial and Defendant has failed to show prejudice as a result of the disclosure of the expert witness. Under these circumstances, the State's request for a hand-writing exemplar is certainly reasonable and should be granted.

Defendant's request for a *Frye* Hearing on this matter should be denied. "Handwriting *comparisons* are based on the principles that no two people write exactly alike and that *characteristics* reoccur throughout every person's writing, although no one writes exactly the same way twice."¹ "*Frye* is inapplicable when 'expert *evidence is in the nature of physical comparisons* as opposed to scientific tests or experiments.'" *State v. Richards*, 166 Ariz. 576, 578, 804 P.2d 109, 111 (App. 1990)(citations omitted)(emphasis added). John Hale is a qualified handwriting expert who has testified in Yavapai Superior Court on numerous occasions. "The presentation of comparative evidence by a qualified expert without a *Frye* hearing is commonplace in criminal trials." *Id.* See also *State v. Dixon*, 153 Ariz. 151, 753 P.2d 761 (1987) (shoe prints compared to tracks); *State v. Blazak*, 114 Ariz. 199, 560 P.2d 54 (1977)(hair identity).

The State reasserts its request that the Court issue an order for the taking of physical evidence of the Defendant, to-wit: handwriting exemplars under the direction of the state's expert witness, John Hale.

RESPECTFULLY SUBMITTED this 5th November, 2009.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By:


Joseph C. Butner
Deputy County Attorney

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¹ Handwriting, Typewriting, Shoeprints, and Tire Treads: FBI Laboratory's Questioned Documents Unit, <http://www.fbi.gov/hq/lab/fsc/backissu/april2001/held.htm> (last visited November 5, 2009) (emphasis added).

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COPIES of the foregoing delivered this
5th day of November, 2009 to:

Honorable Thomas J. Lindberg
Division 6
Yavapai County Superior Court
(via email)

John Sears
107 North Cortez Street, Suite 104
Prescott, AZ 86301
Attorney for Defendant
(via email)

Larry Hammond
Anne Chapman
Osborn Maledon, P.A.
2929 North Central Ave, 21st Floor
Phoenix, AZ
Attorney for Defendant
(via email)

By: Web Cornell